

ORIGINAL
No. 12301

United States
Court of Appeals
For the Ninth Circuit.

WALTER D. ACKERMAN, JR., individually and as Attorney
General of the Territory of Hawaii,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the
County of Maui, and WENDELL F. CROCKETT, individ-
ually and as Deputy to the County Attorney for the County
of Maui,

Appellants.

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 101

Appeal from the United States District Court for the
Territory of Hawaii

FILED

OCT 14 1949

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

BOUSLOG & SYMONDS,

206 Terminal Building,
Honolulu 16, Hawaii.

For the Plaintiffs, International Long-
shoremen's & Warehousemen's Un-
ion, et al.,

RHODA V. LEWIS,

Assistant Attorney General,
Territory of Hawaii,

Iolani Palace,
Honolulu, T. H.

For the Defendants, Walter D. Acker-
man, Jr., et al.

In the United States District Court for the
District of Hawaii

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union;
ANTONIO T. RANIA, individually and as a
member of the ILWU and as President of the
United Sugar Workers, ILWU Local 142, JO-
SEPH KAHLOKULA, LEVI KEALOHA,
BENJAMIN KAHAAWINUI, BENJAMIN
AWANA, LEOCADIO BALDOVI, SOICHI
DOI, YOSHIO NAGATA, LIONEL HANA-
KAHI, JACK HAO, KOICHI ITO, DAVID
KINA, GEORGE KUKAHIKO, CHARLES
REVEIRA, TAKESHI SHIMANO, JOSEPH
SEBASTIN ABREU, RICHARD AH LEE
SAM, FRANK R. ALVARES, LAMBERT
APO, WILLIAM AUWELoa, ALFRED
BOTEILHO, HARRY BOTEILHO, AN-
TONE CALLIDO, THOMAS COELHO,
JOHN CORNIEL, JOHN CRAVALHO,
DANIEL CORNIEL, CALIXTRO CASON,
KIYOTO DOI, ERNEST FEITEIRA,
JAMES BERISTO FLORES, FRANK
FRANCO, JULIO FRANCO, ERNEST FER-
NANDEZ, HIROSHI FUKUSHIMA,
PULEHU FUKUSHIMA, ANTONE GOU-
VEIA, LOUIS HERREIRA, JOSEPH HU,
JUAN HARA, JAMES F. HIGA, EDWARD
GOMES JARDIN, HAI CHOO KIM,

ERNEST KAEA, JOHN KAIO, SOLOMON KEALOHA, MARTIN LACIO, GEORGE LINDSEY, GEORGE MARTINS, FRED CARLOS MEDEIROS, CHARLES PAULOS MONIZ, JOHN NASCIMENTO, BUTA NAKASONE, KIYOTO OGATA, JOHN ORTIZ, LAWRENCE TORRES, PACHECO, ALFRED PERREIRA, RAPHAEL PERRY, MANUEL PERREIRA PICO, HENRY LEOPOLDO PONCE, MANUEL PONCE, JOE PETERS, JOSEPH PONCE, ROSARIO RAMOS, TARIOCHI SASAOKA, HITOSHI SERA, MASAO SERA, LAWRENCE E. SHIROMA, FERMIN SOTO, WILLIAM SAKAIDA, EDWARD TAKEMURA, ROBERT TANIGUCHI, TAKEJI TOMITA, KIYOSHI TOSAKA, ANTONE S. VIERRA, and MASARU YONEDA,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii; INGRAM M. STAINBACK, individually and as Governor of the Territory of Hawaii; E. R. BEVINS, individually and as County Attorney for the County of Maui; WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui, CABLE A. WIRTZ, individually and as Cir-

cuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as Jury Commissioners of the County of Maui; KENNEH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui,

Defendants.

COMPLAINT FOR INJUNCTION; COMPLAINT TO REDRESS DEPRIVATION OF CIVIL RIGHTS; REQUEST FOR HEARING BY THREE-JUDGE COURT

Plaintiffs complain of defendants and allege:

I.

That the International Longshoremen's & Warehousemen's Union (hereinafter referred to as ILWU) is a voluntary unincorporated association and labor union, having a membership of approximately 30,000 persons in the Territory of Hawaii, said members generally being employed as daily wage earners in the sugar, pineapple and longshore

industries. That the plaintiff Antonio T. Rania is a member of said ILWU and the President of the United Sugar Workers, ILWU Local 142 and brings this action individually and in a representative capacity for and on behalf of said ILWU and Local 142 and the members thereof, and in order to protect and obtain the benefits of the Civil Rights Act and the Constitution of the United States of America and the Amendments thereof for its said members and particularly for the other plaintiffs herein.

II.

That plaintiffs Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, James F. Higa, Edward Gomes Jardin, Kim Choo Hai, Ernest Kaea, John Kaio, Solomon Kealoha, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo

Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, and Masaru Yoneda are citizens of the United States. That plaintiffs Leocadio Baldovi, Calixtro Cason, Juan Hara and Martin Lacio are aliens and are citizens of the Philippine Republic; that plaintiff Buta Nakasone is an alien and a citizen of Japan. That all said plaintiffs are residents of the Territory of Hawaii, members of said ILWU, and are employed generally as daily wage earners in the sugar industry of the Territory of Hawaii. That the race of each of said plaintiffs is that set opposite his respective name as follows:

Plaintiff	Race
Joseph Kaholokula	Polynesian (Hawaiian)
Levi Kealoha	Polynesian (Hawaiian)
Benjamin Kahaawinui	Polynesian (Hawaiian)
Benjamin Awana	Polynesian (Hawaiian) (Caucasian)
Leocadio Baldovi	Malayan (Filipino)
Soichi Doi	Mongolian (Japanese)
Yoshio Nagata	Mongolian (Japanese)
Lionel Hanakahi	Polynesian (Hawaiian) (Caucasian)
Jack Hao	Polynesian (Hawaiian)
Koichi Ito	Mongolian (Japanese)
David Kina	Polynesian (Hawaiian)

Plaintiff (Continued)	Race (Continued)
George Kukahiko	Polynesian (Hawaiian)
Takeshi Shimano	Mongolian (Japanese)
Richard Ah Lee Sam	Polynesian (Hawaiian)
	Mongolian (Chinese)
Lambert Apo	Polynesian (Hawaiian)
	Mongolian (Chinese)
William Auwelo	Polynesian (Hawaiian)
Antone Callido	Malayan (Filipino)
	(Puerto Rican)
Calixtro Cason	Malayan (Filipino)
Kiyoto Doi	Mongolian (Japanese)
James Beristo Flores	Polynesian (Hawaiian)
	Malayan (Filipino)
Hiroshi Fukushima	Mongolian (Japanese)
Pulehu Fukushima	Mongolian (Japanese)
Joseph Hu	Polynesian (Hawaiian)
Juan Hara	Malayan (Filipino)
James F. Higa	Mongolian (Japanese)
Kim Choo Hai	Mongolian (Korean)
John Kaio	Polynesian (Hawaiian)
Solomon Kealoha	Polynesian (Hawaiian)
Martin Lacio	Malayan (Filipino)
Buta Nakasone	Mongolian (Japanese)
Kiyoto Ogata	Mongolian (Japanese)
Taroichi Sasaoka	Mongolian (Japanese)
Hitoshi Sera	Mongolian (Japanese)
Masao Sera	Mongolian (Japanese)
Lawrence E. Shiroma	Mongolian (Japanese)
Fermin Soto	Mongolian (Japanese)
William Sakaida	Mongolian (Japanese)

Plaintiff (Continued)	Race (Continued)
Edward Takemura	Mongolian (Japanese)
Robert Taniguchi	Mongolian (Japanese)
Takeji Tomita	Mongolian (Japanese)
Kiyoshi Tosaka	Mongolian (Japanese)
Masaru Yoneda	Mongolian (Japanese)

That the plaintiffs Charles Reveira, Joseph Sebastian Abreu, Frank R. Alvares, Alfred Boteilho, Harry Boteilho, Thomas Coelho, John Cravalho, Ernest Feiteira, Frank Franco, Ernest Fernandez, Antone Gouveia, Edward Gomes Jardin, George Lindsey, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Joe Peters, and Antone S. Vierra are members of the Caucasian race, but are of Portuguese ancestry, and according to the custom and practice of the Hawaiian Islands are considered as non-Caucasians. That plaintiffs John Corniel, Daniel Corniel, Julio Franco, Louis Herreira, John Ortiz, Lawrence Torres Pacheco, Henry Leopoldo Ponce, Manuel Ponce, Joseph Ponce and Rosario Ramos are of Puerto Rican ancestry and are members of mixed Caucasian and Negro races, and according to the custom and practice of the Hawaiian Islands as followed in the United States census classification are considered as non-Caucasians. That plaintiff Ernest Kaea, is of Portuguese-Hawaiian ancestry, and according to the custom and practice of the Hawaiian Islands, as followed in the United States census classification, is considered as a non-Caucasian. That plain-

tiff George Martins is a member of the Caucasian race, but is of Spanish-Puerto Rican ancestry, and according to the custom and practice of the Hawaiian Islands is considered as a non-Caucasian.

III.

That the defendant Walter D. Ackerman, Jr., during all of the times herein mentioned was and now is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii.

That the defendant Ingram M. Stainback during all of the times herein mentioned was and now is the duly appointed, qualified and acting Governor of the Territory of Hawaii.

That the defendant E. R. Bevins during all of the times herein mentioned was and now is the duly elected, qualified and acting County Attorney for the County of Maui.

That the defendant Wendell F. Crockett during all of the times herein mentioned was and now is the duly appointed, qualified and acting Deputy to the County Attorney for the County of Maui.

That the defendant Cable A. Wirtz during all of the time herein mentioned was and now is the duly appointed, qualified and acting Circuit Court Judge and Jury Commissioner of the County of Maui.

That the defendants Augustine Pombo and Claude E. Chatterton during all of the times herein mentioned were and now are the duly appointed, qualified and acting Jury Commissioners of the County of Maui.

That the defendants Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom and Joseph H. Trask during all of the times herein mentioned were and now are the duly appointed, qualified and acting Grand Jurors of the County of Maui.

IV.

That plaintiffs bring and maintain this action pursuant to, and the jurisdiction of this court is founded upon, the Civil Rights Act of the United States, being Title 8, United States Code, Chapter 3, Sections 41, 43, 44 and 46; 28 USC Sections 41(1) and 41(14); and the Constitution of the United States, Amendments I, V, VI, XIV and XIX.

V.

The instant case presents to this court a case and controversy arising under the Constitution and Laws of the United States, and particularly the First, Fifth, Sixth, Fourteenth and Nineteenth Amendments to the Constitution and said Civil Rights Act.

VI.

That plaintiffs herein request that this case be heard and determined by a three-judge court, pursuant to and in conformity with Title 28 USC, Section 380 (Judicial Code, Section 266 amended).

VII.

1) That during all of the time herein mentioned there was and now is a statute of the Territory of Hawaii known as the unlawful assembly and riot statute, being Revised Laws of the Territory of Hawaii, 1945, Chapter 277 Sections 11570-11584, inclusive. That the text of said statute is attached hereto, marked Exhibit A, and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

2) That during all of the times herein mentioned there was and now is a statute in the Territory of Hawaii known as the conspiracy statute being Revised Laws of the Territory of Hawaii 1947, Chapter 243, Sections 11120-11130 inclusive. That the text of said statute is attached hereto marked Exhibit B and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

3) That during all of the times herein mentioned there was and now is in force and effect the Organic Act of the Territory of Hawaii, having as a component part thereof Section 83 relating in part to the composition of juries. That a copy of said Section 83 is attached hereto, marked Exhibit C, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

4) That during all of the times herein mentioned there was and now is in full force and effect as a component part of the Revised Laws of Hawaii, 1945, as amended by the 1945 Session Laws

Section 9791, relating to the qualifications of jurors, both trial and grand jurors, and Section 9812, relating to the challenging of the Grand Jury. That copies of said sections are attached hereto, marked Exhibit D, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

VIII.

That on or about October 16, 1946, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian sugar industry. That the individual plaintiffs, other than Rania, and the various local unions of the ILWU having members employed in the sugar industry were on strike against the sugar industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing.

IX.

That on or about December 2, 1947 the defendants Ackerman, Stainback, Bevins and Crockett presented purported criminal charges alleging violation of the said unlawful assembly and riot statute and the conspiracy statute to the defendant Grand Jurors of the County of Maui and said defendant Grand Jurors returned an indictment against the

individual plaintiffs, other than Rania, which indictment was filed in the Circuit Court, Territory of Hawaii, on December 2, 1947 and is criminal number 2365 among the records of said court; that a copy of said indictment is attached hereto and marked Exhibit E and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

X.

That prior to December 2, 1947, said Grand Jury had been chosen, selected, formed and composed by the defendants Wirtz, Pombo and Chatterton, acting as the Grand Jury Commissioners for the County of Maui. That said defendants in so selecting, choosing, forming and composing said Grand Jury had violated various statutory and constitutional provisions referred to above and as more particularly set forth hereinafter.

XI.

That the individual plaintiffs, other than Rania, have been ordered to appear before the defendant Wirtz, as said Circuit Court Judge, on January 8, 1948 to plead to said indictment and upon entering said plea said plaintiffs will be forthwith required to stand trial unless an order is made and entered herein restraining and enjoining any further proceedings in connection with said criminal proceedings number 2365. That said unlawful assembly and riot statute and said conspiracy statute, and each and every part thereof, are violative of plain-

tiffs' civil rights and of the Constitution of the United States and the Amendments thereto, in the following respects:

1) In that said statutes and each and every part thereof prohibit the free exercise by plaintiffs of their rights of speech, press, assemblage, and of peaceful picketing, in contravention of the First, Fifth and Fourteenth Amendments to the United States Constitution.

2) In that said statutes and each and every part thereof, if enforced against plaintiffs as defendants threaten to do herein, will deprive plaintiffs of their liberty and property without due process of law, in that plaintiffs will be prohibited from exercising their rights of free speech, press and assemblage in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

3) In that said statutes and each and every part thereof constitute a previous restraint upon the free exercise by plaintiffs of their constitutionally protected rights of speech, press and assemblage, in contravention of the First, Fifth and Fourteenth Amendments to the Constitution of the United States, and plaintiffs are thus subjected to criminal prosecutions and penalties for the exercise by them of said constitutionally protected rights.

4) In that said statutes and each and every part thereof are criminal statutes and they are so vague, indefinite, arbitrary and unreasonable that they fail to set up any definitely ascertainable standard of guilt, and fail to apprise plaintiffs of what conduct

on their part would subject them to prosecution for violation of said statutes, and therefore said statutes and their attempted enforcement by defendants against plaintiffs deprive said plaintiffs of liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

5) In that said statutes and each and every part thereof deprive plaintiffs of equal rights, privileges and immunities under the law, namely the rights of free speech, press, assemblage and picketing, in violation of the Civil Rights Act hereinabove referred to.

6) In that plaintiffs are forbidden the rights, privileges and immunities of speech, press and assemblage in publicizing the facts of the labor dispute above referred to while the same prohibition is not applied or enforced against the other disputants in the said strike situation, namely, the employer group, or to other groups in the community.

7) In that the said statutes are unconstitutional and void in that they violate the freedom of speech, press and assemblage provisions of the First and Fourteenth Amendments to the Constitution of the United States, and attempt to deprive persons falling within their prohibitions, such as plaintiffs, of liberty and property, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

XII.

That the defendants, other than the defendant Grand Jurors, in permitting said defendant Grand Jurors to consider and return said indictments, and the returning of said indictments, deprived plaintiffs of their rights in violation of the Sixth, Fourteenth and Nineteenth Amendments to the Constitution of the United States, the Civil Rights Act, Section 83 of the Organic Act of the Territory of Hawaii, and Sections 9791 and 9812 of the Revised Laws of the Territory of Hawaii, 1945, in the following respects:

1) Defendants Wirtz, Pombo and Chatterton, as the Grand Jury Commissioners of the County of Maui, formed selected, chose and returned said Grand Jury of the County of Maui in violation of the aforementioned constitutional and statutory provisions in that said defendants deliberately, intentionally and knowingly selected said Grand Jurors from amongst mainly the Caucasian and Employer groups of the County of Maui, the territorial area over which said Grand Jury exercises jurisdiction.

That of said Grand Jurors approximately 76% are members of the Caucasian race and approximately 24% are members of races other than the Caucasian race. That in the population of the County of Maui approximately 74% are members of non-Caucasian races and approximately 26% are members of the Caucasian race.

That of the plaintiffs in this case and who are defendants in said indictment 54 or 61.2% are non-

Caucasians, and 21 or 38.8% are Caucasians of Portuguese nationality.

That of the said defendant Grand Jury approximately 89% are persons other than daily wage earners, namely, they are owners, managers, entrepreneurs, or clerical persons associated with the former groups. That of said Grand Jury approximately 11% are laborers or daily wage earners.

That amongst the Grand Jurors who propose to hear the case against plaintiffs none of them is a farm laborer, although approximately 50% of the employed persons of the County of Maui are farm laborers. That almost all of the individual plaintiffs herein are farm laborers.

That of said Grand Jurors none are women, although in the County of Maui approximately 40% of the population are women.

That defendants Wirtz, Pombo and Chatterton in choosing, selecting, forming and composing the said Grand Jury have thus intentionally, arbitrarily and knowingly selected said Grand Jury from amongst the male, employer, Caucasian elements of the community and have failed to select Grand Jurors from amongst the non-Caucasian, daily wage earner, farm laborer and female portion of the population. That said Grand Jury is not an impartial Grand Jury and it is not a true, fair or reasonable cross-section of the population nor representative of the community in which said Grand Jury sits.

That because of the facts hereinabove alleged,

plaintiffs were deprived of an impartial, representative and democratic Grand Jury, in violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States and of the said Civil Rights Act.

2) That said Grand Jury has been selected by said defendants Wirtz, Pombo and Chatterton, acting as Jury Commissioners of the County of Maui, in violation of the provision contained in the Organic Act and Section 9791 of the Revised Laws of Hawaii, 1945, and in violation of 8 USC 44, in that said Grand Jury has been deliberately and intentionally selected by said defendants with regard to race, color and nativity in that a deliberate and overwhelming selection has been made on said Grand Jury of members of the Caucasian race. That said defendants have intentionally, arbitrarily and knowingly completely excluded Filipinos, who are members of the Malayan race, from said Grand Jury, although there are more than 10,000 Filipinos or 18.8% of the population, in the County of Maui, they being the second largest population group in said County of Maui. That there are a number of Filipinos who are qualified and eligible for service on said Grand Jury, but defendants have failed and refused to ever select or place any Filipino on the said Grand Jury of the County of Maui.

3) That the action of defendants Wirtz, Pombo and Chatterton in failing and refusing to put women on the Grand Jury of the County of Maui is a direct violation of the Nineteenth Amendment to the Con-

stitution of the United States. That there has never been a woman on the said Grand Jury of the County of Maui. That there are large numbers of women, residents and citizens of the County of Maui, who are qualified to serve as members of said Grand Jury. That the actions of said defendants in completely excluding women from said Grand Jury constitutes a violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States and deprives plaintiffs who are defendants in said unlawful assemblage and riot cases of an impartial, representative and democratic Grand Jury, in violation of their said constitutional rights.

4) That in selecting the aforesaid Grand Jury, the defendants, Wirtz, Pombo and Chatterton, as Jury Commissioners of the County of Maui, have deliberately, intentionally and knowingly misapplied and misenforced Section 83 of the Organic Act of the Territory of Hawaii and Section 9791 of Revised Laws of Hawaii, 1945, in that said defendants have failed and neglected to select a representative, impartial or democratic Grand Jury for the County of Maui in the instant case, but on the contrary have selected a Grand Jury which is representative of only a small segment of the population.

XIII.

That insofar as defendants purport to have selected said Grand Jury in conformity with Section 83 of the Organic Act of the Territory of Hawaii and Chapter 195 of the Revised Laws of Hawaii,

1945, said defendants, acting under color of said statutes, have deprived plaintiffs of a representative, impartial and democratic Grand Jury, in violation of the Civil Rights Act, the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States.

XIV.

That unless an injunction issues out of this court prohibiting defendants from enforcing said unlawful assembly and riot statute and said conspiracy statute against plaintiffs, plaintiffs will be deprived of rights secured to them by the Constitution and laws of the United States, as hereinabove alleged. That the case therefore is a proper case for injunctive relief. That plaintiffs have no plain, adequate or speedy remedy at law.

XV.

That on or about, to wit, July 25, 1947, in certain criminal proceedings entitled Territory of Hawaii v. Diego Barbosa, et al., and Territory of Hawaii v. Abraham Makekau, et al., pending in the said Circuit Court of the Second Circuit, the defendants in said criminal proceedings, charged with violation of said unlawful assembly and riot statute, made and filed certain motions and challenges in said Circuit Court wherein said defendants sought the disqualification and dismissal of said Grand Jury (consisting of the same Grand Jurors named as defendants in this action) for the same reasons as hereinabove set forth; that said motions and chal-

lenges were heard by the Honorable Albert M. Cristy, Circuit Court Judge of the Territory of Hawaii, in hearings held in the Circuit Court of the County of Maui, Wailuku, Maui, on September 15, 16, 17 and 18, 1947. That upon the conclusion of said hearings the said Judge Cristy made and caused to be entered his order denying said motions and challenges, and refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof.

XVI.

That the hearings referred to in Paragraph XV, wherein the defendants referred to therein attempted to challenge, disqualify and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived the defendants therein of, and refused to permit the defendants therein to have a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that the defendants therein were denied a full, fair and impartial hearing in connection with said motions and challenges.

XVII.

That by reason of the order of said Judge Cristy as aforesaid, refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof, plaintiffs allege that any motions or challenges seeking the disqualification and dismissal of said Grand Jury upon the grounds hereinabove set forth would have been useless and futile for the reason that the said Circuit Court of the Second Circuit would rule and hold that the said order of Judge Cristy was and is determinative and binding upon the said court with respect to the validity of said Grand Jury and the members thereof; that the evidence upon any motions or challenges herein would have been the same as the evidence presented to said Judge Cristy and the rulings made thereon would have been the same as the rulings made by said Judge Cristy and therefore plaintiffs herein adopt and incorporate herein the said record of the proceedings before said Judge Cristy as aforesaid in support of the allegation that the said Grand Jury was illegally selected and composed; that at no time prior to said Grand Jury being sworn were plaintiffs advised, nor did plaintiffs or any of them know, said Grand Jurors would consider the return of an indictment against any of said plaintiffs.

XVIII.

That it is necessary and imperative that this court assume jurisdiction in the matter and restrain and enjoin defendants from prosecuting or taking any further proceedings in connection with that certain

indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii entitled Territory of Hawaii v. Joseph Kaholokula, et al., being Criminal Number 2365 among the records of said court, in order that plaintiffs shall have an impartial, representative and democratic Grand Jury.

XIX.

That thereafter on, to wit, December 1, 1947 said defendants referred to in Paragraphs XIV, XV and XVI herein, together with others, filed a suit in the above entitled court entitled International Longshoremen's & Warehousemen's Union v. Walter D. Ackerman, Jr., et al., being Civil No. 828 seeking to enjoin the defendants therein, who are the same defendants as set forth in this suit except that Jean Lane, individually and as Chief of Police of the County of Maui, is not included, from enforcing the said unlawful assembly and riot statute and prohibiting the submission to or consideration of the charge against said defendants or the return of indictments by the said Maui Grand Jury against said defendants in connection with said unlawful assembly and riot charges.

XX.

That thereafter a temporary restraining order was issued in said action Civil No. 828 by the above entitled court, enjoining the defendants Ackerman, Bevins, Crockett and Wirtz from presenting or submitting the said charges involving violation of the said unlawful assembly and riot statute to any

Grand Jurors of the County of Maui until the convening of a three-judge court to determine the constitutionality of said statute.

XXI.

That the matter in controversy exceeds as to each plaintiff, exclusive of costs or interest, the sum of Three Thousand Dollars (\$3000.00); that as to the plaintiffs ILWU, and Antonio T. Rania, individually and as a member of the ILWU and president of the United Sugar Workers, ILWU Local 142, the value of said property rights and personal liberty to the said plaintiffs to be free to exercise the right to picket without fear of previous restraint and subsequent punishment, is in excess of the sum of Three Thousand Dollars (\$3,000.00). That the said plaintiffs have spent thousands of dollars in the organization and establishment of a trade union organization, which cannot function and exercise the said property rights and personal rights in the Territory or in the County of Maui so long as the members of the said ILWU are subject to indictment and are indicted by an illegally constituted grand jury and subject to prosecution under statutes containing unconstitutional limitations on the right to picket because of the fear and intimidation of the members of said organizations engendered by the threat of punishment for the exercise of these rights guaranteed by the Constitution; that the value of said property rights to each of the individual plaintiffs except Rania and the value of the liberty of

each of the said plaintiffs as hereinabove alleged is in excess of Three Thousand Dollars (\$3,000.00), in that each of the said plaintiffs will be forced, by virtue of the deprivation of these rights, to expend money and incur expenses to defend himself against said charges returned by an illegally constituted grand jury under unconstitutional statutes, and each plaintiff will suffer by virtue of said charges and damages to his good name, reputation and fame; that each of the said plaintiffs except Rania, is informed and believes that standing trial upon said charges will result in the loss of his employment and housing accommodations; that because of the economic structure of the Hawaiian Islands and because of the increasing unemployment, there is not open to said plaintiffs any other source of employment or living accommodations, all to the damage of each of the said plaintiffs in excess of Three Thousand Dollars (\$3,000.00).

Wherefore, plaintiffs, and each of them, pray judgment against defendants, and each of them as follows:

- 1) That a temporary restraining order issue against defendants Ackerman, individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and defendants Bevins and Crockett, restraining and enjoining said defendants from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii entitled Territory of Hawaii v. Joseph Kaholokula, et al., and

being Criminal No. 2365 among the records of said court.

2) That a preliminary and permanent injunction issue against defendants to the same effect.

3) That the court find and make its order and judgment that the said unlawful assembly and riot statute and the said conspiracy statute contravene the Constitution and statutes of the United States.

4) That the court find and make its order and judgment that the manner of selection and the composition of said Grand Jury, and the submission to it of charges against plaintiffs, contravene the Constitution and statutes of the United States.

5) That an order to show cause be directed against defendants, and each of them, directing them to be and appear before this court at a day and hour certain to show cause, if any they might have, why they should not be enjoined as herein prayed for.

6) That this case be heard by a three-judge court.

7) That the plaintiffs have their costs of suit herein, and such other and further relief as is meet and just in the premises.

Dated: Honolulu, T. H., December 31, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By /s/ HERBERT RESNER,

Attorneys for Plaintiffs.

Territory of Hawaii

City and County of Honolulu—ss.

Benjamin Kahaawinui, being first duly sworn, deposes and says:

That he is one of the plaintiffs named in the within and foregoing complaint; that he has read said complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information or belief, and as to such matters he believes it to be true.

/s/ BENJAMIN KAHAAWINUI.

Subscribed and sworn to before me this 29th day of December, 1947.

[Seal] EILEEN N. FUJIMOTO,

Notary Public in and for the Territory of Hawaii.

My Commission expires July 31, 1951.

EXHIBIT E

Criminal No. 2365

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

January A.D. 1947 Term

TERRITORY OF HAWAII,

vs.

JOSEPH KAHOLOKULA, LEVI KEALOHA,
BENJAMIN KAHAAWINUI, BENJAMIN
AWANA, LEOCADIO BALDOVI, SOICHI
DOI, YOSHIO NAGATA, LIONEL HANA-
KAHI, JACK HAO, KOICHI ITO, DAVID
KINA, GEORGE KUKAHIKO, CHARLES
REVEIRA, TAKESHI SHIMANO, JOSEPH
SEBASTIN ABREU, RICHARD AH LEE
SAM, FRANK R. ALVARES, LAMBERT
APO, WILLIAM AUWELoa, ALFRED
BOTEILHO, HARRY BOTEILHO, AN-
TONE CALLIDO, THOMAS COELHO,
JOHN CORNIEL, JOHN CRAVALHO,
DANIEL CORNIEL, CALIXTRO CASON,
KIYOTO DOI, ERNEST FEITEIRA,
JAMES BERISTO FLORES, FRANK
FRANCO, JULIO FRANCO, ERNEST
FERNANDEZ, HIROSHI FUKUSHIMA,
PULEHU FUKUSHIMA, ANTONE
GOUVEIA, LOUIS HERREIRA, JOSEPH

HU, JUAN HARA, JAMES F. HIGA,
EDWARD GOMES JARDIN, KIM CHOO
HAI, ERNEST KAEA, JOHN KAIO,
SOLOMON KEALOHA, MARTIN LACIO,
GEORGE LINDSEY, GEORGE MARTINS,
FRED CARLOS MEDEIROS, CHARLES
PAULOS MONIZ, JOHN NASCIMENTO,
BUTA NAKASONE, KIYOTO OGATA,
JOHN ORTIZ, LAWRENCE TORRES PA-
CHECO, ALFRED PERREIRA, RAPHAEL
PERRY, MANUEL PERREIRA PICO,
HENRY LEOPOLDO PONCE, MANUEL
PONCE, JOE PETERS, JOSEPH PONCE,
ROSARIO RAMOS, TAROICHI SASAOKA,
HITOSHI SERA, MASAO SERA, LAW-
RENCE E. SHIROMA, FERMIN SOTO,
WILLIAM SAKAIDA, EDWARD TAKE-
MURA, ROBERT TANIGUCHI, TAKEJI,
TOMITA, KIYOSHI TOSAKA, ANTONE S.
VIERRA, MASARU YONEDA,

Defendants.

INDICTMENT

[Endorsed]: Filed S.C.C. Dec. 2, 1947.

First Count—Riot

The Grand Jury of the Second Circuit of the
Territory of Hawaii, do present that
Joseph Kaholokula, Levi Kealoha, Benjamin Ka-
haawinui, Benjamin Awana, Leocadio Baldovi,

Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastian Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Buta Nakasone, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to-wit, the 16th day of October, 1946, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror to the public and to others, to-wit, Benedict Nelson Souza,

William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, thereby being unlawfully assembled, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, did unlawfully and maliciously assault the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, with force and arms and inflict or attempt to inflict corporal injuries to and upon the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, by striking, pushing and shoving the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, the said defendants then and there using menacing language, threats of violence and threatening gestures and making hostile signs and demonstrations against the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, the said defendants by such acts and by the assault on the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, as above alleged, did thereby tend and intend to intimidate and strike terror to the public and to the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, and the defendants further by such acts and such assault on the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, as hereinabove set forth did intimidate, hinder and

prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden from crossing a public highway and proceeding to and entering upon the premises wherein they were employed, to-wit, the sugar mill of the Maui Agricultural Company Limited and from engaging in their employment and exercising their trade or occupation and did thereby tend and intend to impoverish them, and the defendants by such acts as are herin set forth did endanger the life or lives, limb or limbs, health or liberty of the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, contrary to the statutes in such cases made and provided.

Second Count—Conspiracy, Third Degree

And in order to set forth the unlawful and felonious acts and transactions mentioned in the First Count hereof in different form and count, in order to meet the proof, the Grand Jury aforesaid do further say and present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimanu, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio

Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, John Nascimento, Buta Nakasone, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Take-mura, Robert Taniguchi, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to-wit, the 16th day of October, 1946, did unlawfully, maliciously and fraudulently combine and mutually undertake, conspire and concert together to commit and to incite, aid and encourage others to commit acts of violence against certain persons, to wit Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, to assault the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, with force and arms and to inflict corporal injuries to and upon the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, by striking or beat-

ing the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula, and Conrado P. Corden and to intimidate, threaten with violence, hinder and prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden, from proceeding to and entering upon the premises wherein they were employed, to wit, the sugar mill of the Maui Agricultural Company, Limited, and to intimidate, hinder and prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden from engaging in their employment on such premises and by such acts as aforesaid, to unlawfully prevent the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden from exercising their trade or occupation and to impoverish them, and the said defendants did then, there and thereby commit a Conspiracy in the Third Degree, contrary to the form of the statutes in such cases made and provided.

A True Bill found this 2nd day of December, 1947.

/s/ E. S. ELMORE,

Foreman of the Grand Jury.

WENDELL F. CROCKETT,

Prosecuting Officer, County
of Maui.

[Endorsed]: Filed U.S.D.C. Dec. 10, 1947.

[Title of District Court and Cause.]

SUMMONS

To the above-named defendants:

You are hereby summoned and required to serve upon Harriet Bouslog, Myer C. Symonds, Gladstein, Andersen, Resner & Sawyer, and Herbert Resner, plaintiffs' attorneys, whose address is: 206 Terminal Building, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk of Court.

Date: Dec. 31, 1947.

Note: This summons is issued pursuant to Rule 4 of the Federal Rules Civ. Proc.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the reading, filing and consideration of the verified complaint herein praying for an order directed to the defendants above named to appear before the above entitled court on a day certain and show cause why a preliminary injunction should not be granted herein, enjoining and restraining

defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and the defendant E. R. Bevins, individually and as County Attorney for the County of Maui and defendant Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii entitled Territory of Hawaii v. Joseph Kaholokula, et al., and being Criminal No. 2365 among the records of said court, upon the ground that the unlawful assembly and riot statute and the conspiracy statute of the Territory of Hawaii contravene the Constitution and statutes of the United States and upon the further ground that the manner of selection and the composition of the Grand Jury of the County of Maui, Territory of Hawaii which indicted said plaintiffs contravene the Constitution and statutes of the United States, and

It further appearing to the court from said complaint that the individual plaintiffs, other than Antonio T. Rania, have been ordered to appear before the defendant Cable A. Wirtz, as Judge of the Second Circuit, on January 8, 1948 to plead to said indictment and upon entering said plea said plaintiffs will be forthwith required to stand trial unless an order is made and entered herein restraining and enjoining any further proceedings in connection with said criminal proceedings number 2365, and

It further appearing to the court that a preliminary injunction restraining enforcement of a territorial statute can be granted only by a three-judge court convened in accordance with the provisions of Title 28 USC Section 380 (Judicial Code 266, Amended) and the court being fully advised in the premises and it being a proper case for this order,

It Is Hereby Ordered that the defendants above named be and they are hereby ordered to appear before the undersigned United States District Court Judge in his Courtroom, Federal Building, Honolulu, T. H., on the 6th day of January, 1948, at the hour of 10:00 a.m. to show cause if any they have, why a temporary restraining order should not be issued herein enjoining and restraining defendants as prayed for in said complaint until the convening, hearing and determination of the motion for a preliminary injunction as prayed for in the complaint by a three-judge court.

Dated: December 31, 1947, 11:00 a.m., Honolulu, T. H.

/s/ D. E. METZGER,
U. S. District Judge.

United States Marshal's Return.

The within Summons, Order To Show Cause and Temporary Restraining Order, was received by me on the 31st day of December, A.D. 1947, and is returned executed as follows:

On December 31, 1947, personal service was made upon Walter D. Ackerman, Jr., individually and as

Attorney General of the Territory of Hawaii, by handing to and leaving with him personally a true copy of the Summons, Order to Show Cause and Temporary Restraining Order;

On January 2, 1947, upon E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui; Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; Augustine Pombo and Claude E. Chatterton, both individually and as Jury Commissioners of the County of Maui, by handing to and leaving with Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, at the request of the above named defendants, true copies of the Summons, Order to Show Cause and Temporary Restraining Order.

Returned unserved as to Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom and Joseph H. Trask, individually and as Grand Jurors of the County of Maui, at the request of the attorneys for the plaintiffs.

Dated at Honolulu, T. H. this 5th day of January,
A.D. 1948.

/s/ OTTO F. HEINE,
U. S. Marshal,
District of Hawaii.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Come now the defendants above named (other than the persons named individually and as Grand Jurors of the County of Maui, who have not been served), and for their return to the order to show cause issued herein on December 31, 1947, show:

I.

The Court has no jurisdiction to issue a temporary restraining order, in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. There are no allegations in the complaint showing that the plaintiffs, International Longshoremen's & Warehousemen's Union and Antonio T. Rania, have any right to or need of a temporary restraining order, only the seventy-five individual plaintiffs (other than Rania) being in any way involved in the pending criminal prosecution.

3. The complaint fails to allege facts or circumstances showing that the matter in controversy as to

each of said seventy-five individual plaintiffs exceeds Three Thousand Dollars (\$3,000) exclusive of interest and costs, it appearing upon the face of the complaint that the allegations relating thereto are not well founded in law. Moreover, such facts as are alleged are not sufficiently definite and certain to justify a temporary restraining order.

II.

The Court has no jurisdiction to issue a temporary restraining order, and there is no showing warranting equitable relief in a federal court, in that:

1. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending in a court of the Territory.

2. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

4. The complaint fails to show that any great and immediate irreparable injury to the plaintiffs is threatened, in that:

a. The complaint fails to show that more than one criminal proceeding is threatened, or that plaintiffs or any of them are now being deterred from the enjoyment of rights or privileges under the Constitution or laws of the United States by fear of the criminal penalties imposed by chapters 243 and 277 of the Revised Laws of Hawaii 1945, or that anything at all is involved other than prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

b. The complaint fails to show great and immediate irreparable injury with respect to rights to improve employment conditions or any other property rights.

5. As to the plaintiff union and Antonio T. Rania, no right to or need of a temporary restraining order is shown.

III.

According to the allegations of the complaint, the questions sought to be raised in this proceeding as to the composition of the Grand Jury of the Second Judicial Circuit as impaneled at the time of the indictment (Exhibit E attached to the complaint) are *res judicata*, by reason of the order of the Honorable Albert M. Cristy on the motions and challenges to said Grand Jury mentioned in paragraph XV of the complaint. As shown by Exhibit E filed on December 8, 1947 in Civil No. 828 in this Court and made a part hereof by reference (such Civil No. 828 being the cause entitled *International Long-*

shoremen's & Warehousemen's Union, et al vs. Walter D. Ackerman, Jr., et al, referred to in paragraph XIX of the complaint), the same questions have been heard and determined by a territorial court of competent jurisdiction, but on motions and challenges made by different parties. By their complaint the plaintiffs have voluntarily adopted the record and decision on the motions and challenges made by other persons with the same effect as if made in their own case. As a matter of law, the complaint fails to show any reason why said record and decision are binding upon these plaintiffs other than their own voluntary adoption thereof.

IV.

No sufficient grounds to collaterally attack the decision of the Honorable Albert M. Cristy are shown. This Court has no jurisdiction to review the rulings of said judge, such review being confined to and available in a court of appellate jurisdiction.

V.

Even if the plaintiffs were entitled to have this Court review the rulings of Judge Cristy (which defendants deny), the complaint is indefinite and uncertain in that it fails to show which rulings are objected to and merely offers to produce such information upon the trial, thereby failing to afford defendants notice of the grounds upon which the temporary restraining order is sought.

VI.

The laws of the Territory of Hawaii afford an opportunity to challenge a judge for his bias or prejudice. By voluntarily adopting the record and decision in the matter of the grand jury challenges already heard plaintiffs have waived their rights under said laws.

VII.

In so far as the complaint alleges the failure to include women on said Grand Jury, the complaint is insufficient, for it fails to allege that any of the plaintiffs are women, and it appears upon the face of the complaint that the exclusion of women is required by section 83 of the Hawaiian Organic Act, a valid statute of the United States, the validity of which is not attacked by the complaint.

VIII.

In so far as the composition of the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii as impaneled at the time of the indictment (Exhibit E attached to the verified complaint) is attacked by the complaint for failure to comply with sections 9791 and 9812 of the Revised Laws of Hawaii 1945, and in so far as the order of Judge Cristy is attacked for failure to comply with section 9812 of the Revised Laws of Hawaii 1945, such allegations do not present federal questions.

IX.

The questions sought to be raised in this proceeding as to the constitutionality of chapter 277 of the

Revised Laws of Hawaii 1945 are *res judicata*, for as shown by Exhibit F filed on December 8, 1947 in Civil No. 828 and made a part hereof by reference, and by Exhibit F-1 hereto attached, the constitutionality of such statute was litigated in the criminal proceeding which plaintiffs now seek to restrain by the defendants therein, being substantially the same parties as the plaintiffs herein, and the constitutionality thereof was upheld by the Supreme Court of the Territory of Hawaii, but the form of the indictment having been held defective, a new indictment was returned on December 2, 1947.

X.

This Court has no jurisdiction to review the said rulings of the Supreme Court of Hawaii, such review being confined to and available in the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States.

XI.

The complaint fails to state a substantial federal question as to the constitutionality of chapters 243 and 277 of the Revised Laws of Hawaii 1945, in that said statutes do not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said laws are not vague or indefinite.

XII.

The complaint fails to state a substantial federal question as to the constitutionality of chapters 243

and 277 of the Revised Laws of Hawaii 1945 in that:

1. In so far as the seventy-five individual plaintiffs (other than Rania) are concerned, the complaint fails to allege that at the time of the occurrences referred to in the indictment (Exhibit E attached to the complaint) said plaintiffs were engaged in peaceful picketing or peaceable assembly, and the complaint fails to show that freedom of the press is in any way involved.

2. In so far as the remaining plaintiffs are concerned, the allegations of the complaint do not present a justiciable controversy concerning enforcement of said laws.

XIII.

The complaint fails to show that the Attorney General and other prosecuting officers of the Territory have acted beyond the scope of their authority, or that they are in any way or manner making any oppressive or malicious use of the legal process of the Territory of Hawaii, or that such officers are not acting in good faith in the performance of their duties as such; an action against them seeking to restrain the performance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

XIV.

A judge of a circuit court of the Territory of Hawaii cannot properly be made a party to a proceeding in which an injunction is sought to restrain

and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii.

XV.

The complaint fails to show that any action against the plaintiffs or any of them is threatened by the defendant, Ingram M. Stainback, individually or as Governor of the Territory of Hawaii, or by any of the Jury Commissioners, individually or in their official capacity, and the complaint wholly fails to show a right to a temporary restraining order against them.

XVI.

The complaint fails to state a cause of action for equitable relief or any other relief in favor of the union or Antonio T. Rania.

Wherefore, said defendants pray:

1. That the court deny the motion for a temporary restraining order.
2. That the Court find and decide that the complaint presents no substantial federal question concerning the validity of a statute of the Territory, and that the Court deny the request for a court of three judges.

Dated at Honolulu, T. H., this 6th day of January, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

[Title of District Court and Cause.]

AFFIDAVIT OF RHODA V. LEWIS
ASSISTANT ATTORNEY GENERAL

Territory of Hawaii,
City and County of Honolulu—ss.

Rhoda V. Lewis, being first duly sworn, deposes and says: That she is the duly qualified and acting Assistant Attorney General of the Territory of Hawaii, and as such is one of the attorneys for the defendants making return to the order to show cause in the above entitled matter, and also as such is a prosecuting officer of the Territory of Hawaii.

That the opinion of the Supreme Court of the Territory of Hawaii, rendered November 26, 1947, entitled Territory of Hawaii vs. Joseph Kaholokula, et al, a copy of which was filed on December 8, 1947 in Civil No. 828 in this Court, and made a part hereof by reference, was rendered in the same criminal case as is the subject of the complaint herein, being Criminal No. 2365 in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii. That said opinion of the Supreme Court of the Territory of Hawaii reviewed the overruling of a demurrer or motion to quash filed by substantially the same persons as are the plaintiffs in this cause, to challenge the sufficiency of an indictment for riot and unlawful assembly. That as the opinion of the Supreme Court of the Territory of Hawaii shows said demurrer or motion to quash

involved the constitutionality of the unlawful assembly and riot statutes of the Territory and also involved the form of said indictment. As further appears from said opinion, the Supreme Court of the Territory upheld the constitutionality of said criminal laws but found the form of the indictment fatally defective.

That accordingly, said case, Criminal No. 2365, was again brought before the Grand Jury on December 2, 1947 and a new indictment returned on said day, being Exhibit E attached to the complaint in this cause. That the seventy-five persons named in said indictment of December 2, 1947 are the same persons who litigated the constitutionality of the unlawful assembly and riot statutes of the Territory of Hawaii as aforesaid, except that four persons named in the former indictment were not included in the indictment of December 2, 1947, and one person named in the indictment of December 2, 1947 was not named in the former indictment.

/s/ RHODA V. LEWIS.

Subscribed and sworn to before me this 6th day of January, 1948.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

[Endorsed]: Filed Jan. 6, 1948.

From the Minutes of the United States District
Court for the District of Hawaii

Tuesday, January 6, 1948

[Title of Cause.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis and Mr. Robert Griffith, Deputy Attorneys General, Territory of Hawaii, counsel for the defendants herein. This case was called for hearing on the return to the order to show cause.

At 10:10 a.m., argument was had by Miss Lewis.

At 11:10 a.m., argument was had by Mrs. Bouslog, followed at 11:50 a.m., by Miss Lewis in her closing argument.

Thereafter, the Court granted the prayer of the complaint for hearing by a three-judge court of the merits herein and ordered a temporary restraining order issued.

[Title of District Court and Cause.]

TEMPORARY RESTRAINING ORDER AND
ORDER GRANTING REQUEST FOR
THREE-JUDGE COURT

The order issued on December 31, 1947 directed to the defendants to show cause why a temporary restraining order should not be entered herein enjoining and restraining defendants as prayed for in said complaint until the convening, hearing and

determination of the motion for a preliminary injunction as prayed for in the complaint herein and the return to said order to show cause, having come on regularly for hearing before the undersigned District Court Judge at his courtroom, Federal Building, Honolulu, T. H., on January 6, 1948 at the hour of 10:00 a.m., and the plaintiffs appearing by Harriet Bouslog, Myer C. Symonds and Gladstein, Andersen, Resner and Sawyer by Harriet Bouslog and Myer C. Symonds, their attorneys, and the defendants appearing by Rhoda V. Lewis, Assistant Attorney General, Territory of Hawaii, and Robert Griffith, Deputy Attorney General, their attorneys and the matter having been orally argued and submitted to the Court for decision, and

It appearing to the court that the plaintiffs seek a temporary restraining order against the defendant, Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and defendant E. R. Bevins, individually and as County Attorney for the County of Maui, and defendant Wendell F. Crockett, individually and as Deputy to the County Attorney of Maui restraining and enjoining said defendants from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii, entitled Territory of Hawaii v. Joseph Kaholokula, et al., and being Criminal No. 2365 among the records of said court, and

It further appearing to the Court that the complaint herein presents substantial federal questions, including the alleged invalidity of the unlawful assembly and riot statute of the Territory of Hawaii and the conspiracy statute of the Territory of Hawaii, and

It further appearing to the court from Title 28 USC 380 (Judicial Code Section 266, Amended) that a preliminary injunction restraining enforcement of a territorial statute can be granted only by a three-judge court convened in accordance with the provisions of said section 266 of the Judicial Code, and that this is a proper case for the convening of a three-judge court pursuant to such statute, and

It further appearing to the court that pending the convening and hearing of said application for a preliminary injunction by a three-judge court, the individual plaintiffs, other than Antonio T. Rania, will be required to appear before the defendant Cable A. Wirtz, as Judge of the Second Circuit, to plead to said indictment and upon entering said plea said plaintiffs will be forthwith required to stand trial and thereby a change in the status quo will be effected before a three-judge court can be convened, and the plaintiffs will be subjected to the danger of conviction and sentence for violation of said unlawful assembly and riot statute and said conspiracy statute, and the Court being fully advised in the premises and it being a proper case for this order,

It Is Hereby Ordered that pending the convening, hearing and determination of the motion for a preliminary injunction as prayed for in the complaint by a three-judge court that the defendant Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, his deputies, agents and representatives, and defendant E. R. Bevins, individually and as County Attorney for the County of Maui, and defendant Wendell F. Crockett, individually and as Deputy to the County Attorney of Maui, be and they are hereby restrained and enjoined from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court of the Second Circuit, Territory of Hawaii, entitled, Territory of Hawaii v. Joseph Kaholokula, et al., and being criminal No. 2365 among the records of said court.

Dated at Honolulu, T. H., this 9th day of January, 1948, at 9:30 a.m.

/s/ D. E. METZGER,

U. S. District Judge.

United States Marshal's Return
District of Hawaii

The within Temporary Restraining Order was received by me on the 9th day of January, A.D. 1948, and the same was returned duly executed on the 10th day of January, A.D. 1948, by personally handing to and leaving with Walter D. Ackerman, Jr., individually and as Attorney General of the

Territory of Hawaii a true copy of the Temporary Restraining Order and Order Granting request for Three-Judge Court.

Dated at Honolulu, T. H. this 10th day of January, A.D. 1948.

/s/ OTTO F. HEINE,
U. S. Marshal,
District of Hawaii.

[Endorsed]: Filed Jan. 14, 1948.

Form No. 282

RETURN ON SERVICE OF WRIT

United States of America,
District of Hawaii—ss.

I hereby certify and return that I served the annexed Temporary Restraining Order on the therein-named E. R. Bevins, County Attorney, County of Maui and Wendell F. Crockett, Deputy to the County Attorney for the County of Maui at Wailuku, Maui by handing to and leaving a true and correct copy thereof with E. R. Bevins, County Attorney, County of Maui and Wendell F. Crockett, Deputy to the County Attorney for the County of Maui personally at Wailuku, Maui, in said District on the 10th day of January, A.D. 1948.

OTTO F. HEINE,
U. S. Marshall.

By /s/ RUSSEL A. NEWLAND,
Deputy.

[Endorsed]: Filed Jan. 9, 1948.

[Title of District Court and Cause.]

MOTION FOR MORE DEFINITE STATE-
MENT, MOTION TO DISMISS ACTION
AND FOR SUMMARY JUDGMENT

Come now the defendants above named (other than the persons named individually and as Grand Jurors of the County of Maui, who have not been served), and pursuant to Rules 10(b), 12 and 56 of the Rules of Civil Procedure move this Honorable Court as follows:

I.

Defendants move the Court for an order requiring plaintiffs to make a more definite statement as to certain matters in the complaint, to wit:

1. Paragraph VIII of the complaint reads as follows:

“VIII.

That on or about October 16, 1946, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian sugar industry. That the individual plaintiffs, other than Rania, and the various local unions of the ILWU having members employed in the sugar industry were on strike against the sugar industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing.”

The last sentence of said paragraph does not inform the defendants at what particular time or times during the strike against the sugar industry, they were engaged in peaceful picketing, and defendants desire the particulars thereof as to each individual plaintiff (other than Rania), in relation to the time of occurrence of the events averred in the indictment against him, which indictment is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit E).

2. Paragraphs XV and XVI of the complaint read as follows:

“XV.

That on or about, to wit, July 25, 1947, in certain criminal proceedings entitled Territory of Hawaii v. Diego Barbosa, et al., and Territory of Hawaii v. Abraham Makekau, et al., pending in the said Circuit Court of the Second Circuit, the defendants in said criminal proceedings, charged with violation of said unlawful assembly and riot statute, made and filed certain motions and challenges in said Circuit Court wherein said defendants sought the disqualification and dismissal of said Grand Jury (consisting of the same Grand Jurors named as defendants in this action) for the same reasons as hereinabove set forth; that said motions and challenges were heard by the Honorable Albert M. Cristy, Circuit Court Judge of the Territory of Hawaii, in hearings held in the Circuit Court of the County of Maui, Wailuku, Maui, on September 15, 16, 17 and 18, 1947. That upon the conclusion of

said hearings the said Judge Cristy made and caused to be entered his order denying said motions and challenges, and refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof.

XVI.

That the hearings referred to in Paragraph XV, wherein the defendants referred to therein attempted to challenge, disqualify and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived the defendants therein of, and refused to permit the defendants therein to have a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that the defendants therein were denied a full, fair and impartial hearing in connection with said motions and challenges.”

Said paragraphs do not inform the defendants wherein the Honorable Albert M. Cristy prejudged or predetermined the motions and challenges to the Grand Jury of the Second Circuit, Territory of Hawaii, presented by Diego Barbosa et al and Abraham Makekau et al in the cases mentioned by them, or wherein the movants therein were denied a full,

fair and impartial hearing. Defendants desire the particulars thereof, with references to the record in the matter of said Grand Jury motions and challenges.

II.

Defendants move this Court for an order requiring plaintiffs to make a more definite statement of their several claims, so as to state in a separate count each claim founded upon a separate transaction or occurrence, to wit:

1. To state in a separate count the alleged claim of the seventy-five individual plaintiffs (other than Antonio T. Rania) for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, and to specify therein the defendants against whom such relief is claimed.

2. To state in a separate count the alleged claim of the plaintiff union and Antonio T. Rania for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, and to specify therein the defendants against whom such relief is claimed.

3. To state in a separate count the alleged claim of the plaintiffs for relief on account of the alleged selection and composition of the Grand Jury, and to specify therein the defendants against whom such relief is claimed.

III.

Defendants move the Court to dismiss the action for lack of jurisdiction over the subject matter, because the matter in controversy does not exceed

three thousand dollars exclusive of interest and costs as to each of the plaintiffs or any of them, and specifically:

1. The allegations of the complaint relating to the jurisdictional amount are not well founded in law.

2. The allegations of the complaint relating to the jurisdictional amount are not sufficiently definite and certain.

3. Defendants controvert, as to each and every plaintiff, the allegations of the complaint concerning the jurisdictional amount, and hereby put said plaintiffs to their proof thereof.

IV.

Defendants move the Court to dismiss so much of the complaint as purports to allege, in favor of the seventy-five individual plaintiffs (other than Rania), a claim for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.

2. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending against such plaintiffs in the Circuit Court, Second Circuit, of the Territory of Hawaii.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

5. The complaint fails to show that said plaintiffs are threatened with more than one criminal proceeding, or that anything at all is involved other than prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

6. The questions sought to be raised in this proceeding as to the constitutionality of the unlawful assembly and riot statute are *res judicata*, for as shown by Exhibit F filed on December 8, 1947 in Civil No. 828 and made a part hereof by reference, and by Exhibit M hereto attached, the constitutionality of such statute was litigated in the criminal proceeding which plaintiffs now seek to restrain by the defendants therein, being substantially the same parties as the plaintiffs herein, and the constitutionality thereof was upheld by the Supreme Court of the Territory of Hawaii, but the form of the indictment having been held defective, a new indictment was returned on December 2, 1947.

7. This Court has no jurisdiction to review the

said rulings of the Supreme Court of Hawaii, such review being confined to and available in the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States.

8. The complaint fails to show that the prohibitions contained in said unlawful assembly and riot statute and said conspiracy statute will impose on the plaintiffs great and immediate irreparable injury with respect to their rights to improve employment conditions or any other rights.

9. The complaint fails to show that said plaintiffs are guiltless of wrongful conduct, or that they come into equity with clean hands.

10. The complaint fails to show that said plaintiffs were peacefully picketing during the occurrence of the events averred in the indictment against them, which indictment is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit E).

11. The complaint shows on its face that the defendant prosecuting officers of the Territory of Hawaii do not propose to prosecute said plaintiffs for peaceful picketing or peaceable assembly, or for the exercise of their constitutional rights of free speech, press, or assemblage.

12. The complaint shows on its face that said unlawful assembly and riot statute and said conspiracy statute do not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statutes are not vague or indefinite, and that said statutes are constitutional and valid.

13. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

V.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim of the plaintiff union and Antonio T. Rania for relief against the enforcement of the unlawful assembly and riot statute and the conspiracy statute, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.

2. Plaintiff union is not entitled to prosecute this suit under the Civil Rights Act of the United States.

3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court

of the United States, do not constitute a threat of irreparable injury.

4. The complaint fails to show that said plaintiffs, if they do not obtain equitable relief, will suffer great and immediate irreparable injury.

5. The allegations of the complaint do not present a justiciable controversy concerning future enforcement of the unlawful assembly and riot statute and the conspiracy statute, in cases not now pending.

6. The complaint fails to show that the union members whom plaintiffs seek to represent will be subjected to further prosecutions under said unlawful assembly and riot statute and said conspiracy statute, other than the pending criminal proceedings.

7. The complaint fails to show that the defendant prosecuting officers of the Territory of Hawaii propose to prosecute plaintiffs' members for peaceful picketing or peaceable assemblage, or for the exercise of their constitutional rights of free speech, press, or assemblage.

8. No allegations showing that the plaintiffs' members are subject to further prosecutions under said unlawful assembly and riot statute and said conspiracy statute could be made without showing intent to engage in wrongful conduct, depriving the plaintiffs of the right to equitable relief under the maxim that "he who comes into equity must come with clean hands."

9. The complaint fails to show any reason why

this Court should interfere with the pending criminal proceedings by undertaking to adjudicate the issues concerning the constitutionality of the unlawful assembly and riot statute and the conspiracy statute.

10. The complaint shows on its face that said unlawful assembly and riot statute and said conspiracy statute do not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statutes are not vague or indefinite, and that said statutes are constitutional and valid.

11. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii vs. Joseph Kaholokula et al, No. 2657", a copy of which was filed on December 8, 1947 in Civil No. 828 in this Court as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

12. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the perform-

ance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

VI.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim for relief on account of the alleged selection and composition of the 1947 Grand Jury, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim upon which such relief can be granted.

2. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending against such plaintiffs in the Circuit Court, Second Circuit, of the Territory of Hawaii.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

5. It appears upon the face of the complaint that there is involved only one criminal prosecution, now pending.

6. The complaint fails to allege or show any invalidity in the laws governing the selection and composition of the Grand Jury, or in the rules of the Supreme Court of Hawaii relating to Grand Juries, a copy of said rules being hereto annexed, marked Exhibit N, and made a part hereof by reference.

7. The allegations of the complaint that the rulings of the Honorable Albert M. Cristy in the Barbosa and Makekau cases are binding on these plaintiffs are not well founded in law.

8. It appears upon the face of the complaint that these plaintiffs have not presented and will not endeavor to present to the Circuit Court of the Second Circuit, wherein the indictment against them is pending, their objections to the selection and composition of the 1947 Grand Jury, and that accordingly they have waived such objections.

9. In the alternative, if plaintiffs have not waived their objections to the selection and composition of said 1947 Grand Jury, nevertheless the complaint fails to present a justiciable controversy relating thereto.

10. In the alternative, if plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings of the Honorable Albert M. Cristy in the Barbosa and Makekau cases, as applicable in their case, they have thereby waived their challenge of said judge for bias and prejudice, which they seek to assert in this Court.

11. Assuming, without conceding, that plaintiffs

may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the questions sought to be raised in this case as to the selection and composition of said 1947 Grand Jury are res judicata; this Court has no jurisdiction to review the said rulings, such review being confined to and available in the Supreme Court of Hawaii, the Circuit Court of Appeals of the Ninth Circuit, and the Supreme Court of the United States.

12. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the complaint shows that plaintiffs have failed to exhaust their remedies by appeal, and fails to show any ground for collateral attack.

13. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the complaint fails to show such direct pecuniary interest in the judge making such rulings as would show lack of due process.

14. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the record in said Barbosa and Makekau cases, incorporated by paragraph XVI of the complaint,

fails to show denial of any right secured to the plaintiffs by the Constitution and laws of the United States; on the contrary said record affirmatively shows: (a) that thirty-one persons on the 1947 Grand Jury list were, by blood or intermarriage, of the same races or mixtures of races as the plaintiffs; (b) that six persons on the 1947 Grand Jury list were members of the plaintiff, International Longshoremen's & Warehousemen's Union; (c) that the exclusion of women was expressly required by section 83 of the Hawaiian Organic Act, which the complaint does not assert to be invalid; and (d) that the Jury Commissioners conscientiously and impartially performed their duties as, appears from the portion of said record hereto annexed as Exhibit O and made a part hereof by reference, and from the whole of said record.

15. Assuming, without conceding, that plaintiffs may adopt, as they endeavor by the complaint to do, the motions, challenges, evidence, and rulings in the Barbosa and Makekau cases, as applicable in their case, the complaint, in alleging the failure of the Jury Commissioners and Judge Cristy to comply with sections 9791 and 9812 of the Revised Laws of Hawaii 1945, does not present federal questions.

VII.

Defendant Cable A. Wirtz, individually and as Circuit Court Judge of the County of Maui, moves the Court to dismiss the action as to him, on the following grounds:

1. The complaint fails to state a claim for relief against him.

2. A judge of a circuit court of the Territory of Hawaii cannot properly be made party to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii.

VIII.

Defendants Cable A. Wirtz, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, move the Court to dismiss the action as to them on the ground that the complaint fails to state a claim for relief against them.

IX.

Defendants move the Court to dismiss the persons named individually and as Grand Jurors of the County of Maui, on the following grounds:

1. There has been a misjoinder of parties; the grand jurors of a circuit court of the Territory of Hawaii cannot properly be made parties to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court.

2. Said persons have not been served with the process of this Court.

Wherefore, defendants pray:

a. That the action be dismissed.

b. That summary judgment be entered for the defendants.

c. That if the action be not wholly dismissed, or if summary judgment be not entered for the defendants upon the whole case, that the action be dismissed as to certain of the defendants, and that plaintiffs be required to make certain matters in the complaint more definite, and that plaintiffs be required to make a more definite statement of their several claims so as to state in a separate count each claim founded upon a separate transaction or occurrence.

Dated at Honolulu, T. H., this 20th day of January 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

WENDELL F. CROCKETT,

Deputy County Attorney,

County of Maui.

Attorneys for Defendants
(other than the persons
named individually and
as Grand Jurors of the
County of Maui, who have
not been served).

[Title of District Court and Cause.]

NOTICE

To Harriet Bouslog, Myer C. Symonds, Gladstein,
Andersen, Resner and Sawyer, and Herbert
Resner,

Attorneys for the Plaintiffs,

Please take notice that the foregoing motions will be presented before the three-judge court convened in accordance with section 266 of the Judicial Code, as provided by order of the Honorable D. E. Metzger, judge of the above entitled court, made January 9, 1948, immediately upon the convening of said court for the hearing of this cause at the Federal Building, Honolulu, Territory of Hawaii, or as soon thereafter as counsel can be heard.

Dated at Honolulu, T. H., January 20, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

WENDELL F. CROCKETT,

Deputy County Attorney,

County of Maui.

Attorneys for Defendants
(other than the persons
named individually and
as Grand Jurors of the
County of Maui, who have
not been served).

EXHIBIT M

[Title of District Court and Cause.]

AFFIDAVIT OF RHODA V. LEWIS,
ASSISTANT ATTORNEY GENERAL

Territory of Hawaii,
City and County of Honolulu, ss.

Rhoda V. Lewis being first duly sworn deposes and says: That she is the duly qualified and acting Assistant Attorney General of the Territory of Hawaii, and as such is one of the attorneys for the defendants making return to the order to show cause in the above entitled matter, and also as such is a prosecuting officer of the Territory of Hawaii.

That the opinion of the Supreme Court of the Territory of Hawaii, rendered November 26, 1947, entitled Territory of Hawaii vs. Joseph Kaholokula, et al, a copy of which was filed on December 8, 1947 in Civil No. 828 in this Court as Defendants' Exhibit F and is made a part hereof by reference, was rendered in the same criminal case as is the subject of the complaint herein, being Criminal No. 2365 in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii. That said opinion of the Supreme Court of the Territory of Hawaii reviewed the overruling of a demurrer or motion to quash filed by substantially the same persons as are the plaintiffs in this cause, to challenge the sufficiency of an indictment for riot and unlawful assembly. That as the opinion of the Supreme Court of the Territory of Hawaii shows said demurrer or motion to quash involved the constitutionality of the unlawful assembly and riot statutes of the

Territory and also involved the form of said indictment. As further appears from said opinion, the Supreme Court of the Territory upheld the constitutionality of said criminal laws but found the form of the indictment fatally defective.

That accordingly, said case, Criminal No. 2365, was again brought before the Grand Jury on December 2, 1947 and a new indictment returned on said day, being Exhibit E attached to the complaint in this cause. That the seventy-five persons named in said indictment of December 2, 1947 are the same persons who litigated the constitutionality of the unlawful assembly and riot statutes of the Territory of Hawaii as aforesaid, except that four persons named in the former indictment were not included in the indictment of December 2, 1947, and one person named in the indictment of December 2, 1947 was not named in the former indictment.

/s/ RHODA V. LEWIS,

Subscribed and sworn to before me this 19th day of January, 1948.

[Seal)

/s/ AILENE JARRETT,

Notary Public, First Judicial
Circuit, Territory of Hawaii.

My Commission expires June 30, 1949.

EXHIBIT N

In the Supreme Court of the Territory of Hawaii

Rule 18 of the Rules of the Supreme Court
as amended Feb. 14, 1947, and March 27,
1947.

18. Rules Relating to Grand Juries.

A. When Required.

“No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger.” U. S. Const. Amend. Art. 5.

B. How Drawn.

“Until otherwise provided by the legislature of the Territory grand juries may be drawn in the manner provided by the Hawaiian statutes for drawing petty juries.” Org. Act, Sec. 83.

C. Qualifications of Jurors.

“No person who is not a male citizen of the United States and twenty-one years of age and who cannot understandingly speak, read, and write the English language shall be a qualified juror or grand juror in the Territory of Hawaii,” “and all juries shall hereafter be constituted without reference to the race or place of nativity of the jurors.” Org. Act, Sec. 83.

D. Number of Jurors.

The number of grand jurors in each circuit shall

be not less than thirteen nor more than twenty-three. (See Org. Act, Sec. 83, and R. L. H. 1935, Sec. 2404.)

E. Sessions.

“Until otherwise provided by the legislature of the Territory, grand juries * * * shall sit at such times as the circuit judges of the respective circuits shall direct.” Org. Act, Sec. 83.

F. Challenges.

Before the grand jury retires, the prosecuting officer or any person held to answer a charge for a criminal offense may challenge the panel or an individual juror for cause to be assigned to the court. All such challenges shall be tried and determined by the court.

G. Foreman.

From the persons summoned to serve as grand Jurors and appearing the court shall appoint a foreman and may remove him for cause. The court may appoint another foreman when the necessity arises.

H. Oath of Grand Jurors.

Substantially the following oath shall be administered to the grand jurors:

“You, and each of you, do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching this present service; that you will present no one through envy,

hatred, or malice, nor leave any one unrepresented through fear, favor, affection, gain, reward or hope therefor, but will present all things truly, as they come to your knowledge, according to the best of your understanding; and that you will keep secret the proceedings had before you.”

I. Charge of the Court.

The grand jury, being impaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to their duties and as to the law pertaining to such cases as may come before them. The court may further charge the jury when the necessity arises.

J. Officer in Attendance.

The court may appoint an officer to attend upon the grand jury.

K. Retirement of the Grand Jury.

The grand jury shall then retire to a private room and inquire into the offenses cognizable by them.

L. Clerk.

The grand jury may appoint one of their number to be their clerk, to preserve minutes of the proceedings before them, which minutes shall be delivered to the prosecuting officer, when so directed by the grand jury.

M. Subpoena of Witnesses.

“The several circuit courts may subpoena witnesses to appear before the grand jury in like manner as they subpoena witnesses to appear before their respective courts.” Org. Act, Sec. 83.

N. Swearing Witnesses.

Witnesses appearing before the grand jury may be sworn in open court or by the foreman of the grand jury, or, in his absence, by any member thereof.

The oath or affirmation may be substantially as follows:

“You do solemnly swear (or affirm) that the evidence which you shall give before the grand jury shall be the truth, the whole truth, and nothing but the truth.”

O. Presence of Others With Jurors.

The prosecuting officer or any member of the grand jury may interrogate witnesses before the grand jury. The prosecuting officer shall advise the grand jury in regard to the law of the cases that come before them, and draw the indictments. An interpreter may be present at the examination of witnesses before the grand jury upon request of the foreman. The circuit judge before whose court the grand jury is in attendance may, upon request of the foreman of the grand jury, assign an official circuit court reporter to attend and report the testimony given by the witnesses before the grand jury and who shall furnish the prosecuting officer with a transcript of such testimony when so directed by the foreman of the grand jury. The interpreter and the reporter shall keep secret all proceedings of the grand jury. Except the prosecuting officer and his assistant, the shorthand reporter, the interpreter, and the witness under examination, no person shall

be permitted to be present during the session of the grand jury. No person except the members of the grand jury shall be permitted to be present during the expression of their opinions or the giving of their votes.

P. Twelve Grand Jurors to Concur.

No indictment shall be found, nor shall any presentment be made, without the concurrence of at least twelve grand jurors.

Q. Endorsement by Foreman and Prosecuting Officer.

An indictment when found shall be endorsed, "A true bill," and such endorsement shall be signed by the foreman. An indictment shall be endorsed also by the prosecuting officer. A presentment, when made, shall be signed by the foreman.

R. Presenting and Filing.

Indictments or presentments, when found, shall be presented by the foreman, in the presence of other grand jurors, to the court, and shall there be filed; but such as are found for a felony against any person not in custody or under recognizance shall not be open to the inspection of any person except the prosecuting officer until the defendant therein shall have been arrested; provided, however, that upon the filing of any such indictment the court may, for the purpose of extradition or for other cause presented by the prosecuting officer to be in the public interest, order that such indictment against a person not in custody or under recog-

nizance be open to such inspection as the court shall direct.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated, at Honolulu, T. H., Jan. 16, A. D. 1948.

[Seal] /s/ LEOTI V. KRONE,
Clerk, Supreme Court,
Territory of Hawaii.

[Endorsed]: Filed Jan. 20, 1948.

Item 56.

[Note]: Exhibit O, being pages 149 to 162 of the original transcript of the grand jury hearing in the Second Circuit is set out on pages 701-713 on volume I Civil No. 828.

Item 58.

[Note]: Bill of Particulars filed January 28, 1948 in Civil No. 828 and by court's ruling of April 16, 1948 entered as well in Civil No. 836 is set out on pages 327 to 334 in volume I Civil No. 828. The entire transcript of proceedings in Criminal Nos. 2412 and 2413, Circuit Court, Second Judicial Circuit T. H. attached to the Bill of Particulars in Civil No. 828 is set out on pages 567 to 1082 in volume I Civil No. 828.

In the United States District Court
for the District of Hawaii

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S
& WAREHOUSEMEN'S UNION, A voluntary,
unincorporated association and labor
union; ANTONIO T. RANIA, individually and
as a member of the ILWU and as President of
the United Sugar Workers, ILWU Local 142,
JOSEPH KAHOLOKULA, et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
at Attorney General of the Territory of Ha-
waii; et al.,

Defendants.

ORDER

Before: Biggs, Circuit Judge, and Metzger and
Harris, District Judges.

And, now, to wit, this 19th day of April, 1948,
upon consideration of the briefs and arguments of
the respective parties by their counsel in the above
entitled cause on the motion for more definite state-
ment, for the dismissal of the action and for sum-
mary judgment, it is ordered:

(a) That that part of the motion to the effect
that the claims be made more definite and certain,

(b) That that part of the motion moving for
summary judgment in favor of the defendants, and

(c) That those portions of the motion moving for dismissal of the action, be and the same hereby are denied: and

It is Further Ordered that those portions of the motion going to the dismissal of the action as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise be and the same hereby are retained for further consideration and for ultimate disposition at an appropriate time:

For the Court:

/s/ JOHN BIGGS, JR.

/s/ DELBERT METZGER.

/s/ GEORGE B. HARRIS,

[Endorsed]: Filed April 19, 1948.

[Title of District Court and Cause.]

STIPULATION

It is Hereby Stipulated by and between the plaintiffs and defendants in the above-entitled action (other than the persons named individually and as grand jurors of the County of Maui, who have not been served), by their respective counsel, but for the purposes of this action only, that:

1. With respect to paragraph I of the complaint, it is stipulated that the International Longshoremen's and Warehousemen's Union, hereinafter referred to as ILWU, one of the plaintiffs above named, is a voluntary unincorporated association and labor union having a membership of approxi-

mately 30,000 persons in the Territory of Hawaii, said members generally being employed as wage earners in the sugar, pineapple and longshore industries. The plaintiff, Antonio T. Rania, at the time this action was filed and now is a member of the ILWU and the president of the United Sugar Workers, ILWU, Local 142.

2. The citizenship of the individual plaintiffs (other than Rania) is as set forth in paragraph II of the complaint, and their race is as set forth in the schedule in said paragraph II and the allegations which follow said schedule. No stipulation is made as to the custom or practice of the Hawaiian Islands or the United States Census Bureau in classifying persons as Caucasian or otherwise. All of said individual plaintiffs are residents of the Territory of Hawaii and members of said ILWU, and with the exception of the plaintiffs, Antonio Rania, Levi Kealoha, Benjamin Kahaawinu, Joseph Kaholokula, and Leocadio Baldovi, at all times here involved were and at the time the complaint was filed were wage earners employed by Maui Agricultural Company, Limited, a sugar company.

3. Paragraph III is stipulated to except as to the last paragraph thereof and in that connection it is stipulated that the persons therein named went out of office as grand jurors as of January 12, 1948.

4. With reference to paragraph VIII it is stipulated that on or about October 16, 1946 and for some time prior thereto a labor dispute existed in the Territory of Hawaii, and among other members of the ILWU on strike many employees of Maui Agri-

cultural Company, Limited were on strike, including those of the individual plaintiffs above named who have been stipulated to be employees of said Maui Agricultural Company, Limited.

5. With reference to paragraph IX, it is stipulated that on December 2, 1947 the grand jury of said circuit returned an indictment against the individual plaintiffs (other than Rania) which indictment was filed in the Circuit Court, Territory of Hawaii, on December 2, 1947 under Criminal No. 2365 among the records of the said court, a copy of said indictment being attached to the complaint as Exhibit E thereof. The grand jury returning said indictment was the 1947 grand jury, the membership of which was substantially as stated in the last paragraph of paragraph III of the complaint.

6. With reference to paragraph XI, it is stipulated that said individual plaintiffs, other than Rania, will be arraigned and required to plead to said indictment filed December 2, 1947, unless such arraignment is prevented by an order made and entered herein restraining and enjoining such further proceedings.

7. That the following exhibits are deemed admitted in evidence.

Item 1—Exhibit—Plaintiffs' E—Indictment filed December 2, 1947. Filing date—December 31, 1947, annexed to complaint.

Item 2—Exhibit—Defendants' L—Certificate as to the drawing of the 1948 grand jury. Filing date—January 17, 1948, filed in Civil No. 828 supplementing motion filed January 14, 1948.

Item 3—Exhibit—Defendants' N—Rules of Supreme Court of Hawaii relating to grand juries. Filing date—January 20, 1948, appended to motion.

8. It is Stipulated that subject to all legal objections on the part of the defendants the following exhibits in Civil 828 shall be deemed in evidence in this case:

Defendants' Exhibit C-1, Certificate of Disqualification of Judge Wirtz, filed in Civil No. 828 December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit C-2, Supplemental Certificate of Disqualification of Judge Wirtz, filed in Civil No. 828 on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit D, Order and Authorization to Judge A. M. Cristy, filed in Civil No. 828 on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit E, motions and challenges to the grand jury made by Barbosa and certain others not parties to this case (being plaintiffs in Civil No. 828), filed in Civil No. 828 on December 8, 1947 with the return to the order to show cause.

9. It is Stipulated that the record of the proceedings before the Honorable A. M. Cristy, including the testimony taken as transcribed by the court reporter of the Second Judicial Circuit, said transcript of record having been heretofore filed in this court, shall be deemed in evidence in this case with the same effect as if said testimony were adduced by the respective parties in this court, the entire

record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived.

10. It is Stipulated that the exhibits received by said Honorable A. M. Cristy, upon production in this court, shall be deemed in evidence in this case, subject to all legal objections not hereinabove waived.

11. All parties reserve the right to introduce such further evidence and exhibits as may be material.

Dated at Honolulu, T. H., this 22nd day of April, 1948.

/s/ RHODA V. LEWIS,
Assistant Attorney General,
Territory of Hawaii.

/s/ WENDELL F. CROCKETT,
Deputy County Attorney,
County of Maui.
Attorneys for Defendants.

/s/ HARRIETT BOUSLOG,
/s/ MYER C. SYMONDS,
Attorneys for Plaintiffs.

[Endorsed]: Filed April 23, 1948.

[Title of District Court and Cause.]

ANSWER

Come now the defendants above named other than the persons named individually and as grand jurors

of the County of Maui, who have not been served, and for answer to the complaint herein:

I.

Deny all the material allegations thereof not stipulated by the stipulation between the parties dated April 22, 1948.

II.

Aver that the indictment against the individual plaintiffs other than Rania was made and returned upon evidence presented to the grand jury pertaining to incidents and occurrences at Paia, Island of Maui, County of Maui, Second Judicial Circuit, Territory of Hawaii, hereinbelow set forth, and upon evidence presented to the grand jury concerning the participation of the plaintiffs in the offenses then and thereby committed, to wit: that on the 16th day of October, 1946, the said plaintiffs with divers other persons the total numbering in excess of 500, having assembled together, and having organized and formed a picketing line on the public highway between the office and mill of Maui Agricultural Company, Limited, at said Paia, being so assembled together, when requested by Assistant Chief of Police Freitas to permit entry on said mill premises of Maui Agricultural Company, Limited, by Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrad P. Corden, employees of said company, the plaintiffs with other unnamed persons in a violent, tumultuous and threatening manner and uttering threats of violence, did form into a massed block

and did surge forward and did shove, push and assault the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrade P. Corden and the escorting police officers, and by such shoving, pushing and assaulting as aforesaid did intimidate, terrify and prevent such employees from proceeding across said public highway and from proceeding to their place of employment, and from engaging in their employment; that the said plaintiffs and other persons by participating in, promoting, aiding, and abetting such violent, tumultuous and threatening massing into a block and said shoving, pushing and assaulting and other actions and conduct which followed, in the manner aforesaid, did act unlawfully, maliciously and without authority in law, and such acts were not lawful, peaceful or constitutionally protected activities of free speech or press, peaceable assemblage, or peaceful picketing.

Dated at Honolulu, T. H., this 22nd day of April, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General,
Territory of Hawaii.

/s/ WENDELL F. CROCKETT,

Deputy County Attorney,
County of Maui.

Attorneys for Defendants.

[Endorsed]: Filed April 23, 1948.

Item 63.

[Note]: Order consolidating for hearing and trial Civil Nos. 828 and 836, filed April 23, 1948, is the same. Set out on pages 348 to 349 in volume I Civil No. 828.

Item 64.

[Note]: Opinion of the court filed December 27, 1948, is the same as that in Civil No. 828. Set out on pages 370 to 520 in volume I Civil No. 828.

Item 65.

[Note]: Order amending opinion of December 27, 1948, filed January 18, 1949, is the same as that in Civil No. 828. Set out on pages 521 to 522 in volume I Civil No. 828.

Item 66.

[Note]: Motion suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and for the dismissal of the action as to them and affidavit, filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, January 20, 1949, in Civil No. 836 as well as Civil No. 828, was in the same form as that filed for Civil No. 828. Set out on pages 523 to 525 in volume I of Civil No. 828.

Item 67.

[Note]: Order (rule to show cause) of February 23, 1949, issued in Civil No. 836 as well as Civil No. 828, was in the same form as that issued in Civil No. 828, except that Jean Lane, Chief of Police of the County of Maui, was not ordered to show cause. Set out on pages 525 to 529 in volume I Civil No. 828.

Item 68.

[Note]: Return to rule to show cause filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, Harold L. Duponte, County Attorney for the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, March 10, 1949, in Civil No. 836 as well as Civil No. 828 is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane and changes in wording so as to make proper references to the respective causes. Set out on pages 530 to 537 in volume I Civil No. 828.

Item 70.

[Note]: Return of E. R. Bevins to order to show cause, dated March 8, 1949 and filed in propria persona March 11, 1949 in Civil No. 836 as well as Civil No. 828 is in the same form as that filed for Civil No. 828. Set out on pages 538 to 539 in volume I Civil No. 828.

Item 71.

[Note]: Return of Wendell F. Crockett to order to show cause, dated March 11, 1949 and filed in propria persona March 12, 1949 in Civil No. 836 as well as Civil No. 828, is in the same form as that filed for Civil No. 828. Set out on pages 539 to 541 in volume I Civil No. 828.

Item 73.

[Note]: Order discharging rule to show cause, filed March 24, 1949, made in Civil No. 836 as well as Civil No. 828, is in the same form as that made in Civil No. 828. Set out on pages 541 to 542 in volume I Civil No. 828.

In the United States District Court
For the District of Hawaii
Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., et al.,
Defendants.

DECREE

This cause having come on to be heard before the Honorable John Biggs, Jr., a circuit judge of

the Third Judicial Circuit of the United States, designated and assigned by the Honorable Fred M. Vinson, The Chief Justice of the United States, to act as a circuit judge in the Ninth Judicial Circuit of the United States and to discharge all the official duties of a circuit judge thereof as appears from the order of designation and assignment, and also designated and assigned by the Honorable Francis A. Garrecht, Senior United States Circuit Judge of the Ninth Judicial Circuit of the United States, to hold the District Court of the United States for the District of Hawaii as appears from that order of designation and assignment, and before the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, designated and assigned by the Honorable Francis A. Garrecht, Senior United States Circuit Judge for the Ninth Judicial Circuit of the United States as aforesaid, to hold the District Court of the United States for the District of Hawaii, and before the Honorable Delbert E. Metzger, Senior District (now Chief) Judge of the District Court of the United States for the District of Hawaii, the Honorable Delbert E. Metzger having called to his assistance to hear and to determine the above entitled cause, pursuant to Section 266 of the Judicial Code of 1911, the Honorable John Biggs, Jr., a circuit judge of the Third Judicial Circuit of the United States designated and assigned as aforesaid to act as a circuit judge of the Ninth Judicial Circuit of the United States

and to discharge all the official duties of a judge of that circuit, and the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, and the Court having reserved for further consideration the applicability of the provisions of Section 266 of the Judicial Code of 1911, stating that all three judges would sit to hear and determine the above entitled cause, and

The Court having proceeded to hearing of the motions filed by defendants on January 20, 1948 and of the application for preliminary injunction, and

The Court on April 19, 1948 having denied defendants' motions save that those portions of the motions going to the dismissal of the actions as to particular defendants were reserved for further consideration, and

As to the application for preliminary injunction, the Court having ruled that it would consider the matters presented by defendants' motions as constituting their return to the order to show cause why such preliminary injunction should not issue, and said application for preliminary injunction having been consolidated for further hearing with the application for a permanent injunction, by agreement of the parties, and this cause having been consolidated for trial with Civil No. 828, and both causes having been set for trial on April 23, 1948, and having come on for trial on that date, and

The defendants at the outset of the trial hav-

ing taken and having thereafter preserved objections to the entire testimony and exhibits relating to the grand jury, and the Court having reserved for further consideration the question whether such testimony and exhibits should be struck, and

The parties having made various other motions to strike testimony or documentary evidence which were reserved for later disposition, and

The defendants at the end of plaintiffs' direct case having moved to dismiss the action on all of the grounds stated in their previous written motion and on the ground that the proof had not substantially altered the case, and the Court having reserved this matter for later disposition, and

The cause having been fully heard on the merits, and the Court having made and filed herein its opinion, containing all necessary findings of fact and conclusions of law as contemplated by Rule 52(a) of the Federal Rules of Civil Procedure, and

The opinion of the Court having been filed on December 27, 1948 and it appearing from the motion and affidavit of Walter D. Ackerman, Jr., Attorney General of Hawaii, that the defendants E. R. Bevins and Wendell F. Crockett, respectively County Attorney and Deputy County Attorney of Maui County, ceased to hold their respective offices on or about January 3, 1949 and that Harold L. Duponte was elected County Attorney for the County of Maui and took office on or about January 3, 1949 and that Thomas Ogata is now Deputy

County Attorney of Maui County, and the allegations of the motion and affidavit not having been denied by the plaintiffs and being conceded by all parties to be true, and the said Walter D. Ackerman, Jr., Attorney General of Hawaii having moved to dismiss the action as to the defendants Bevins and Crockett as moot, now therefore,

It Is Hereby Ordered, Adjudged and Decreed That:

1. This decree is rendered by the judges above named as a specially constituted three-judge court under sections 2281 and 2284 of revised Title 28, United States Code, or in the alternative, if these provisions be inapplicable in the United States District Court for the District of Hawaii, then as the United States District Court for the District of Hawaii comprised of three judges sitting en banc.

2. This decree is binding on the defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and his agents and deputies and successors in office, and upon the defendants E. R. Bevins and Wendell F. Crockett individually.

3. The action is dismissed as to the defendants E. R. Bevins and Wendell F. Crockett in their respective capacities as County Attorney for the County of Maui and Deputy County Attorney for the County of Maui, they having ceased to hold office on or about January 3, 1949.

4. The action is dismissed as to the defendants Ingram H. Stainback, individually and as Governor

of the Territory of Hawaii, Cable A, Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allen H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom, and Joseph H. Trask, individually and as Grand Jurors of the County of Maui.

5. This decree shall inure to the benefit of the plaintiff International Longshoremen's and Warehousemen's Union, a voluntary, unincorporated association and labor union, and to the plaintiff Antonio T. Rania, as a member of the International Longshoremen's and Warehousemen's Union and as president of the United Sugar Workers, International Longshoremen's and Warehousemen's Union Local 142, and in a representative capacity for and on behalf of said International Longshoremen's and Warehousemen's Union and Local 142 and the members thereof.

6. The defendants' objections to the testimony and exhibits relating to the grand jury are overruled and the motion to strike the same denied, and all other motions of any of the parties to strike testimony or documentary evidence are denied.

7. The defendants' motion to dismiss the action at the end of the plaintiffs' direct case is denied.

8. All of the defendants' motions made January 20, 1948 and denied April 19, 1948, having been reconsidered, are denied.

9. The unlawful assembly and riot law of the Territory of Hawaii, as contained in chapter 277 of the Revised Laws of Hawaii 1945, is void as unconstitutional.

10. The conspiracy law of the Territory of Hawaii, as contained in chapter 243 of the Revised Laws of Hawaii 1945, is void as unconstitutional.

11. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced in October, 1946, against the plaintiffs Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shitano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Clason, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herrera, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos

Medeiros, Charles Paulos Moniz, John Nascimento, Buta Nakasone, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Masao Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Takeji Tomita, Kiyoshi Toska, Antone S. Vierra, and Masaru Yoneda, under any complaint or indictment based on the unlawful assembly and riot statute or the conspiracy statute.

12. The indictment, at Criminal No. 2365, returned by the Grand Jury of the County of Maui on December 2, 1947 against the individual plaintiffs named in paragraph 11 is void and is and shall be held for nought, the said Grand Jury having been illegally constituted in violation of the provisions of the Constitution of the United States, of the laws of the United States and of the laws of the Territory of Hawaii.

13. The plaintiffs shall recover against the defendants their costs herein expended, but shall take nothing by way of damages.

/s/ JOHN BIGGS, JR.,

Circuit Judge.

/s/ DELBERT E. METZGER,

Chief Judge.

/s/ GEORGE B. HARRIS,

District Judge.

Dated: March 29th, 1949.

[Entered]: Mar. 29, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 26th day of April, 1949.

WALTER D. ACKERMAN, JR.,
Individually and as Attorney
General of the Territory of
Hawaii,

By /s/ RHODA V. LEWIS,
Attorney General, Attorney
for Walter D. Ackerman, Jr.

[Endorsed]: Filed April 26, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that E. R. Bevins and Wendell F. Crockett, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 22nd day of April, 1949.

/s/ E. R. BEVINS,
In Propria Persona.

/s/ WENDELL F. CROCKETT,
In Propria Persona.

[Endorsed]: Filed April 26, 1949.

Item 78.

[Note]: Bond on appeal executed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, as principal, and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surely, filed April 28, 1949 in Civil No. 836 as well as Civil No. 828, is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane. Set out on pages 552 to 557 in volume I Civil No. 828.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET RECORD WITH THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

Upon application of Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, and good cause appearing therefor:

It Is Hereby Ordered that the time of all of the appellants for filing the record on appeal and docketing the appeal with the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including July 25, 1949.

Dated at Honolulu, T. H., this 26th day of May, 1949.

/s/ D. E. METZGER,
U. S. District Judge.

Approved:

BOUSLOG & SYMONDS,
By /s/ HARRIET BOUSLOG,
Attorneys for Respondents.

[Endorsed]: Filed May 29, 1949.

Item 80.

[Note]: Suggestion for incorporation in the record on appeal of certain matters of record in this court, together with affidavit and letter, filed June 23, 1949, and such order as the court may make relative thereto, is the same as that printed for Civil No. 828. Set out on pages 558 to 564 in volume I Civil No. 828.

Item 81.

[Note]: Stipulation and order for the consolidation of Civil Nos. 828 and 836 for filing of the records on appeal and docketing of the appeals, filed June 27, 1949, is the same as that printed for Civil No. 828. Set out on pages 564 to 565 in volume I Civil No. 828.

Item 83.

[Note]: Waiver of bond on appeal as to appellants Wendell F. Crockett and E. R. Bevins, filed in Civil No. 836 as well as Civil No. 828, is in the same form as that filed for Civil No. 828. Set out on page 566 in volume I Civil No. 828.

Item 84.

[Note]: Designations of record on appeal are the same as those printed for Civil No. 828. Set out on pages 1949 to 1973 in volume IV Civil Nos. 828 and 836.

Item 84-A.

[Note]: Statements of points on appeal pursuant to Rule 19, subdivision 6, Rules of the United States Court of Appeals for the Ninth Circuit are the same as those printed for Civil No. 828. Set out on pages 1974 to 1992 in volume IV Civil Nos. 828 and 836.

[Endorsed]: No. 12301. United States Court of Appeals for the Ninth Circuit. Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, Appellant, vs. International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union, et al., Appellees. E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individuall and as Deputy to the County Attorney for the County of Maui, Appellants, vs. International Longshoremen's & Warehousemen's Union, a voluntary unincorporated association and labor union, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Territory of Hawaii.

Filed July 23, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

